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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/341,821 09/01/99 WARING

M CV0244

EXAMINER

HM12/0221

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GHALI, I
ART UNIT

PAPER NUMBER

1615
DATE MAILED:

02/21/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/341,821

Applicant(s)

Waring et al.

Examiner

Isis Ghall

Group Art Unit

1615



☒ Responsive to communication(s) filed on Dec 21, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 1-6, 8-10, 13-15, and 17-20 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-6, 8-10, 13-15, and 17-20 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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DETAILED ACTION

The receipt is acknowledged of applicants' IDS, filed 08/07/2000 and request for extension of time and amendment B, both filed 12/21/2000.

Claims 7 and 16 have been canceled and claim 20 has been added per applicants' amendment B in Paper No. 12.

Claims 1-6, 8-10, 13-15, 17-20 are pending in the application and status of the claims are as follows:

The following new ground of rejection is necessitated by applicants' amendment B in Paper No.12:

1. Claims 1 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmolka, US 4,495,168 ('168).

The following rejections were discussed in details in previous office action in Paper No.9, and they are maintained for reasons of record:

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2. Claims 1-6, 8-10, 13, 15, 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over of Court et al., EP 0 666 081 (EP '081) by itself or in view of Sperry et al., US 5,059,187 ('187).

3. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over EP '081 in view of US '187 as applied to claims 1-10, 13 and 15-19 above, and further in view of Tipton et al., EP 0 560 014 (EP '014).

Response to Arguments

4. Applicant's arguments filed 12/21/2000 have been fully considered but they are not persuasive.

Applicants are traversing the rejections by arguing that the reference disclosing a liquid composition and it is difficult and inefficient to administer gel with a wound dressing which has the risk of contamination.

In response to the above argument, the examiner is pointing out that '168 is teaching clearly an aerosol gel. The claims are drawn to composition and the future intended use or method of use have no patentable significance in composition claims. The risk of contamination is not claimed and has no patentable weight in composition claims. It is within the skill in the art to produce multiple doses aerosols. Accordingly, it would have been obvious for one having ordinary skill in the art at the time of the invention to include the gel composition in an aerosol vessel of, motivated by the teaching of Sperry et al. that the rigid container of the aerosol is

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adapted to withstand a high pressure (col.2, lines 18-21), with reasonable expectation of success of treating wounds by delivering gel composition from an aerosol vessel.

Applicants argue that it would not be obvious to one skilled in the art that a liquid dispenser would necessarily function satisfactorily to dispense gel.

It is the position of the examiner that a conclusion of obviousness under 35 U.S.C. 103(a) does not require absolute predictability, only a reasonable expectation of success; and references are evaluated by what they suggest to one versed in the art, rather than by their specific disclosure. *In re Bozek*, 163 U.S.P.Q. 545 (CCPA 1969).

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Isis Ghali whose telephone number is (703) 305-4048. The examiner can normally be reached on Monday-Friday from 8:30 to 5:30 Eastern time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Examiner Isis Ghali

February 14, 2001.

THURMAN K. PAGE
SUPERVISOR/EXAMINER
TECHNOLOGY CENTER 1600